

Appl. No. 10/031,165
Reply to Office Action of December 7, 2005

Remarks/Arguments:

According to the Office Action, mailed December 7, 2005 (hereinafter, "Office Action"), claims 1 to 24 are currently pending and under examination. In the Office Action, the Examiner made the following new arguments, objections and rejections:

- Claims 1-24 were made subject to restriction and election requirement.

1. **Remarks:**

a. **Response is timely.**

A response to the Office Action was due on January 7, 2006. The applicants attach hereto a Petition For Extension Of Time Under 37 CFR 1.136(a)(2) for 3 months along with payment of the associated fee. With the 3-month extension of time to respond to the Office Action, a response becomes due on April 7, 2006. This response was filed before this date and is therefore timely.

b. **Fees.**

The applicants have authorized the Commissioner to charge Deposit Account No. 50-0244 for \$ 1020.00 fee for filing of a Petition For Extension Of Time Under 37 CFR 1.136(a).

The applicants do not believe that any additional fees are due. However, please charge any additional fees required or credit any fees overpaid to Deposit Account No. 50-0244.

c. **Amendments to the Claims.**

Claims 12-20 were cancelled without prejudice or disclaimer.

Claims 21 to 24 were withdrawn without prejudice or disclaimer.

2. **Arguments.**

Claims 1-24 of the Instant Application were made subject to a both a restriction and election requirement.

a. **Restriction Requirement.**

The Examiner alleges that claims 1-24 covers more than a single invention; and, therefore, requires the applicants to elect a single invention from:

- I. Claims 1-11, drawn to:

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- a nucleic acid molecule having a *M. catarrhalis* nucleotide sequence selected from the group consisting of SEQ ID NO: 5, 6, 8, or 10, or the complementary sequence thereto;
- a nucleotide sequence encoding an about 200 kDa OMP as recited in + part (c);
- SEQ ID NO: 12, SEQ ID NO: 13, SEQ ID NO: 45, SEQ ID NO: 46; SEQ ID NO: 47, SEQ ID NO: 48 and a nucleotide sequence encoding a 5'-truncation, or a 5'-truncation and 3'-truncation of a gene encoding an about 200 kDa OMP of *M. catarrhalis*; and
- a vector and host cell comprising the same.
- II. Claims 12-18, drawn to a recombinant outer membrane protein of *Moraxella catarrhalis* or truncation thereof, and a composition comprising the same.
- III. Claims 19 and 20, drawn to a method of inducing protection against disease caused by *Moraxella catarrhalis* by administering a composition comprising outer membrane protein of *M. catarrhalis* or a truncation thereof.
- IV. Claims 21-24, drawn to a method for the production of a 200 kDa outer membrane protein of *M. catarrhalis* or a C-terminal half thereof by transforming a host cell with a vector comprising a nucleic acid molecule and growing the host cell.

The applicants elect to prosecute invention I (claims 1-11).

Because of this election, the applicants have cancelled claims 12-20. The Examiner states that the claims 12-18 are drawn to a recombinant outer membrane protein of *Moraxella catarrhalis* or truncation thereof, and a composition comprising the same, and claims 19 and 20 are drawn to a method of inducing protection against disease cause by *Moraxella catarrhalis* by administering a composition comprising outer membrane protein of *M. catarrhalis* or truncation thereof. The applicants reserve the right to prosecute the cancelled subject matter in a later application.

Also, because of this election, the applicants have withdrawn claims 21-24. The Examiner states that claims 21-24 are drawn to a method for the production of a 200 kDa outer membrane protein of *M. catarrhalis* or a C-terminal half thereof by transforming a host with a

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vector comprising a nucleic acid molecule and growing the host cell. The applicants reserve the right to rejoin these claims in the event that the product claims on which the withdrawn claims depend are found allowable.

b. Election of Species.

The Examiner alleges that the claims are directed to more than one species to be examined; and, therefore, requires the applicants to elect a disclosed species. With respect to the nucleic acid molecule species (claims 1 and 3), the Examiner lists the species as:

SEQ ID NO: 5,
SEQ ID NO: 6,
SEQ ID NO: 8,
SEQ ID NO: 10,
the nucleotide sequence recited in claims 1(c),
SEQ ID NO: 12,
SEQ ID NO: 13,
SEQ ID NO: 45,
SEQ ID NO: 46,
SEQ ID NO: 47,
SEQ ID NO: 48,
the nucleotide sequence recited in claim 3(g), and
the nucleotide sequence recited in claim 3(h).

The applicants elect SEQ ID NO: 48 as the species for examination.

3. Conclusions.

The amendments, remarks and arguments submitted herein are intended to be fully responsive to the outstanding Office Action, to advance the prosecution of the present invention, and to place the application in condition for allowance.

The applicants respectfully request consideration and entry of this paper. The applicants also respectfully request reconsideration of this application, as amended, and issuance of a timely Notice of Allowance in this case. Should the Examiner have any questions concerning this application, she is invited to contact the undersigned at (570) 839-5537.

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Respectfully submitted,

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